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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 726

BURLINGTON-CHICAGO CARTAGE, INC.
Appellant,

vs.

UNITED STATES OF AMERICA,
and
INTERSTATE COMMERCE COMMISSION,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

JOHN E. LESOW
JAMES E. LESH
3737 N. Meridian Street
Indianapolis 8, Indiana
Attorneys for Appellant.

C. E. Pauley & Co., Inc., Indianapolis

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OPINIONS BELOW

The opinion of the Interstate Commerce Commission is reported in 58 M. C. C. 465 and is set forth in Appendix A, *infra*, p. 13.

The opinion of the United States District Court for the Southern District of Illinois is reported in 178 F. Supp. 857. The Court's opinion is set forth in Appendix C, *infra*, p. 34.

JURISDICTION

1. This is an action to annul, vacate and set aside that portion of a report (Appendix A, *infra*, p. 13) and order (Appendix B, *infra*, p. 32) of the Interstate Commerce Commission which decided that plaintiff is entitled to make only one-way, westbound, movements with respect to certain intermediate and off-route operating rights acquired by plaintiff. The complaint also asks the Court to require the Commission to hear and determine said issue *de novo*. The action was brought under Title 49 of the United States Code, Sections 17(9), 305(g) and 305(h); and Title 28 of the United States Code, Sections 2321 to 2325, inclusive, and Section 2284.

2. The judgment of the District Court sought to be reviewed was entered November 30, 1959 (Appendix D, *infra*, p. 44). Notice of appeal was filed in the United States District Court for the Southern District of Illinois (Northern Division) on January 15, 1960.

3. Jurisdiction to hear this appeal is conferred upon this Court by Section 1253 of Title 28 of the United States Code.

4. The following cases sustain the jurisdiction of this Court to entertain a direct appeal from an order of a district court of three judges:

Radio Corporation of America et al. v. United States et al., 341 U. S. 412 (1951);

American Trucking Associations, Inc., et al. v. United States et al., 326 U. S. 77 (1945).

STATUTES INVOLVED

Section 10 of the Administrative Procedure Act (Act of June 11, 1946, C. 324, 60 Stat. 237, as amended; United States Code Title 5, Section 1009(e)) provides in part as follows:

> "(e) So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law * * * and determine the meaning or applicability of the terms of any agency action. It shall * * * (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law * * *. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by either party, and due account shall be taken of the rule of prejudicial error."

QUESTIONS PRESENTED

The following questions are presented by the appeal herein:

1. Whether the defendant Interstate Commerce Commission erred in its decision of June 23, 1952 (Appendix A, *infra*, p. 13), in deciding that the certificate of public convenience and necessity of C. H. Smith being purchased by plaintiff granted only a one-way, westward, service right with respect to the intermediate and off-route points designated in the certificate.

2. Whether the Commission's action was so plainly erroneous and unwarranted as to show that (a) plaintiff was not afforded a fair and impartial hearing and that (b) the requirements of the Administrative Procedure Act (Title 5 United States Code, Section 1001 *et seq.*) were not met.

3. Whether plaintiff, by consummating the purchase transaction with Smith following the Commission's decision, thereby became estopped from attacking that part of the decision which erroneously interpreted the Smith certificate.

STATEMENT

How the Controversy Arose

Plaintiff is an interstate motor vehicle common carrier of property. It entered into a contract to purchase certain operating rights held by one C. H. Smith, doing business as Chicago-Nebraska Motor Express. The contract was conditioned upon approval by the Interstate Commerce Commission.

To gain such approval, plaintiff and Smith, on November 2, 1949, filed with the Commission an appropriate joint application in the premises. Following the hearing thereof the Commission, on August 14, 1950, denied the application.[1] On rehearing, however, the Commission reversed itself and, on June 23, 1952, entered its report and order approving the purchase transaction (Appendices A and B, respectively, *infra*, pp. 13, 32). It is in connection with this decision that the controversy herein arose. The dispute between plaintiff and the defendant Commission stems from the certificate of public convenience held by Smith and purchased by plaintiff. The pertinent part thereof reads as follows:

> "*General Commodities* * * *, over regular routes, From Chicago, Ill., to Hastings, Nebr., as follows:
> * * *

[1] None of the facts in the controversy at bar is disputed.

Return, with no transportation for compensation except as otherwise authorized, over these routes to Chicago.

Service is authorized to and from the intermediate points of Peoria, Rock Island, and Moline, Ill., Davenport and Council Bluffs, Iowa and Omaha, Lincoln, and Fairmont, Nebr., and the off-route points of Canton, Ill., Clinton, Iowa, and Beatrice, Nebr."

No controversy arose as to the meaning of the words in the certificate "From Chicago, Ill., to Hastings, Nebraska." Clearly a right to perform only a one-way service is spelled out—from the origin point of Chicago to the destination point of Hastings. It is with respect to the meaning of the certificate language authorizing service in connection with the specified intermediate and off-route points that the question had its rise.

In its report of June 23, 1952, approving the purchase transaction the Commission, although conceding that for years Smith and his lessees (as well as plaintiff under temporary authority) had been operating in *both* directions with respect to said points, and that all the parties—including the opposition carriers—construed the Smith certificate as granting such right, held that service could be performed "on westbound traffic only." (Appendix A, *infra*, pp. 13, 29-30).

Thereafter, in an effort to correct the Commission's said error, plaintiff timely filed a petition for reconsideration asking that the decision be modified so as to permit both east and westbound traffic with respect to these intermediate and off-route points. This, the Commission on January 5, 1955, denied.

On September 23, 1953, the Commission reissued to plaintiff a consolidated certificate of public convenience, including the rights purchased from Smith.